

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and
THE UNITED STATES COAST GUARD
*** * ***
For use of the
Oil Spill Liability Trust Fund

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1 **I. PURPOSE**

2
3 This Memorandum of Understanding (MOU) between the United States Environmental
4 Protection Agency (USEPA) and the United States Coast Guard (USCG) establishes the
5 agreement by which USEPA accesses the Oil Spill Liability Trust Fund (OSLTF or the Fund),
6 administered by the National Pollution Funds Center (NPFC), in order to carry out oil removal
7 under 33 USC 1321(c) [Clean Water Act (CWA) or Federal Water Pollution Control Act
8 (FWPCA)], with the concomitant USEPA responsibility to fully account for OSLTF funds and
9 support the NPFC's efforts to recover the Federal government's costs from responsible parties
10 (RPs). This MOU also describes the NPFC's responsibility to fully support the USEPA by
11 providing timely funding and other support to carry out oil removals.
12

13
14 **II. AUTHORITY**

15
16 This MOU is entered into under the authority of the Oil Pollution Act of 1990 (OPA), 33 USC
17 2701 et seq., as implemented by E.O. 12777 (and subsequent delegations), to carry out oil
18 removal activities under the Clean Water Act and the National Oil and Hazardous Substances
19 Pollution Contingency Plan (NCP), 40 CFR 300. OPA 6002, 33 USC 2752, makes available
20 annually a portion of the OSLTF to carry out oil removals under CWA. Subject to OPA 6002,
21 OPA 1012(a) makes the OSLTF available for the payment of those Federal costs, including the
22 costs of monitoring removal actions, that are consistent with the NCP.
23

24 Executive Order (EO) 12777 delegates the authority and responsibility for implementing the
25 provisions of Title I and various other sections of OPA, pertaining to management of the
26 OSLTF for use in removals, to the Secretary of the Department of Transportation (DOT).
27 DOT has redelegated these responsibilities to the Commandant of the USCG, who has further
28 redelegated those responsibilities to the Director of the NPFC.
29

30 The National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR 300,
31 contains details for implementing removals under OPA and the CWA, including the role of the
32 On-Scene Coordinator (OSC). Under the EO, the USEPA is responsible for removal of oil
33 spills in the Inland Zone of the US as defined in the NCP. The USCG is responsible for
34 removal of oil spills in the Coastal Zone. The USCG and the USEPA assign OSCs to direct
35 these removals.
36

37 The principal organizations within the two agencies with fiscal responsibilities for these
38 matters are the Office of Solid Waste and Emergency Response (OSWER) for the USEPA and
39 the National Pollution Funds Center for the USCG.
40
41

III. DEFINITIONS

“Oil”, is defined by section 1001 of OPA [33 USC 2701(23)] as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601) and which is subject to the provisions of that Act.

“Remove” or “removal” is defined in OPA 1001 (30), 33 USC 2701 (30), to mean “containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.”

“Removal costs”, is defined by OPA 1001 (31), 33 USC 2701 (31), OPA as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.”

IV. USES OF THE OSLTF

Before the OSLTF can be made available for removal costs, there must be an OPA incident. In Polrep-1 (or as soon as possible), the OSC shall document the following facts: that oil was discharged into, or is a substantial threat to, the navigable waters of the U.S., the adjoining shorelines, or the EEZ.

If these prerequisites are met, the OSLTF is available to reimburse the EPA via Interagency Agreements (IAGs) for removal costs resulting from their activities conducted under 33 USC 1321(c) necessitated by the OPA incident. To be reimbursable from the Fund, the removal activities which resulted in the costs being incurred must be consistent with the NCP. See Appendix 2.

V. MIXED SPILLS

The term “mixed spills” is used in this agreement to describe discharges which involve oil and other substances. This is different from “mixed events” or “mixed sites” which are terms used to describe locations where discharges of OPA oil and releases of CERCLA hazardous substances are co-located, but remain separate and distinct problems.

The substances involved in a mixed spill will dictate whether its removal may be funded by either the OSLTF or Superfund. Both funds will not be used on the same mixed substance.

1 For removal to be funded by the OSLTF, the composition of the mixture must be such that it
2 can be considered oil subject to OPA. Appendix 2 specifies criteria for selecting a funding
3 source for removal of a mixed spill.
4

5 6 **VI. ACCESSING THE OSLTF**

7
8 To initiate funding for an oil removal, the USEPA OSC must obtain a Federal Project Number
9 (FPN) and an approved project ceiling from the USCG no later than the conclusion of the
10 preliminary assessment described in the NCP, Subpart D Section 300.305, "Phase II -
11 Preliminary Assessment and Initiation of Action." See Appendix 3.
12
13

14 **VII. REPORTING**

15
16 The USEPA shall send pollution reports (Polreps) consistent with the NCP, Subpart B Section
17 300.135(m), to the NPFC. The USEPA OSC shall document the OPA incident, removal
18 activities and their connection to the incident, and resulting costs. The USEPA will also
19 provide status reports in accordance with current NPFC reporting requirements, as detailed in
20 Appendix 4.
21
22

23 **VIII. COST DOCUMENTATION**

24
25 The USEPA shall provide full and timely documentation of all costs, both reimbursable and
26 non-reimbursable, in every case to support reimbursement of the USEPA and to support
27 recovery of costs from the responsible parties and other liable persons. USEPA OSCs shall
28 also review all costs incurred during the removal operation and certify that they are proper and
29 consistent with the NCP. In lengthy or cost intensive cases, the USEPA will provide interim
30 documentation to enable the NPFC to bill the RP(s) and start the interest clock for monies
31 owed to the government. See Appendix 5.
32
33

34 **IX. PROPERTY & EQUIPMENT PURCHASES**

35
36 The OSC may use OSLTF funds for purposes deemed necessary for an oil removal. This
37 includes the purchase of non-consumable property and equipment when operational necessity
38 dictates it or when it is clearly cost effective for the government. If the total acquisition is not
39 exclusively for oil removal, other funding sources must be applied in appropriate proportion.
40 The OSC has custody of such property and equipment, and must dispose of it in accordance
41 with NPFC guidance. Following the conclusion of a removal, all property and equipment not
42 consumed must be inventoried and reported in the case documentation. To avoid the need for
43 disposal, equipment should be leased whenever possible. See Appendix 6.
44

1 **X. DESIGNATION OF SOURCE & CLAIMS**

2
3 USEPA OSCs will make reasonable efforts to promptly determine the source of the oil
4 pollution and, when it involves a vessel or facility, to identify any potential RPs, and will
5 provide the information to the NPFC case officer. OPA 1014, 33 USC 2714, requires
6 designation of source(s), where possible and appropriate, and requires notification of the
7 responsible parties (RPs) to initiate the claims process. USEPA OSCs have not been delegated
8 the authority to formally designate sources for purposes of claims advertising OPA. See
9 Appendix 7.

10
11
12 **XI. BILLING**

13
14 To obtain reimbursement for eligible costs, USEPA will present billing documentation
15 supported by case documentation to the NPFC. See Appendix 8.

16
17
18 **XII. CONTRACTING.**

19
20 The USEPA and the USCG will provide contracting support to OSCs to enable them to obtain
21 commercial services needed to conduct removals. The agencies will make these resources
22 available according to agreements and procedures in Appendix 9.

23
24
25 **XIII. COST RECOVERY AND LITIGATION SUPPORT**

26
27 USEPA shall fully support NPFC with respect to all USEPA uses of OSLTF funds following
28 removal activities when NPFC proceeds to recover the Federal Government's removal costs
29 from the RP(s).

30
31
32 **XIV. MODIFICATION AND TERMINATION**

33
34 Either the USCG or the USEPA may propose changes to this MOU. Both agencies must
35 approve a change before it becomes effective. Either agency may terminate the MOU by
36 giving a thirty (30) day advance written notice to the other Agency. Adding or changing
37 appendices or attachments does not constitute modification of the overall MOU. Such
38 additions or changes may be made by agreement of officials responsible for the specific
39 subject area in the USEPA and USCG. The officials making any such change shall
40 immediately bring the change to the attention of the signers of this MOU, or their successors,
41 and then shall disseminate a notice of the change so as to inform all users of the MOU.

XV. PERIOD OF AGREEMENT

This MOU shall continue in effect until terminated, modified or amended. This MOU shall become effective on the date of the last signature below.

XIV. SIGNATURES

_____/s/_____
Date_____

Daniel F. Sheehan
Director
National Pollution Funds Center
United States Coast Guard

_____/s/_____
Date_____

Elliott P. Laws
Assistant Administrator
Office of Solid Waste and
Emergency Response
U.S. Environmental Protection Agency

_____/s/_____
Date_____

William H. Campbell
Director of Finance and Procurement
United States Coast Guard

_____/s/_____
Date_____

Harvey B. Pippen, Jr.
Director
Office of Grants and Debarment
U.S. Environmental Protection Agency

_____/s/_____
Date_____

Betty L. Bailey
Director
Office of Acquisition Management
U.S. Environmental Protection Agency

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APPENDIX 1. NPFC USER REFERENCE GUIDE

NPFC publishes the NPFC User Reference Guide. It addresses for OSCs the use of the OSLTF and Superfund, along with applicable regulations and background information. Due to its extensive nature, the material is published separately as a Supplement to the Marine Safety Manual. It can be obtained by contacting the NPFC's Customer Service Division at (703) 235-4709. To assure that the Guide is available where needed, the USEPA will annually provide NPFC a list of HQ and Regional organizations that employ or support OSCs. The list shall include the address and NPFC will supply each with a copy of the Reference guide and updates as necessary. The Reference Guide is divided into a series of topics briefly explained as follows.

- A. Organizations Using Pollution Funds.** This provides information on entities able to access the Funds managed by NPFC and includes Federal Agencies, States and Trustees.
- B. Introduction to NPFC.** This describes the origins, roles, missions, case teams and regions, functional contacts, and frequently used acronyms.
- C. Removal Actions.** This provides procedures for accessing the Funds for Clean Water Act and CERCLA removals. It includes OSC financial management checklists, guidance on mystery spills, ACP guidance, and reports. The Technical Operating Procedures (TOPS) for Removal Costs and the TOPS for Resource and Cost Documentation are included in this chapter.
- D. Investigative Considerations.** This addresses liability limits, proximate cause, designation of source, notification and advertising, and potential responsible parties.
- E. State Access.** This includes the State Access TOPS and the State Access regulations issued under OPA, Section 1012(d)(1). It also addresses procedures for requesting funds, removal costs, pollution reports, payment, litigation, and cooperative agreements.
- F. Natural Resource Damage Assessments.** This includes the NRDA/Initiate TOPS which contains initiation criteria, purchase of property, reporting, and requests for reimbursement.
- G. Claims.** This includes the Claims regulations and the Claimant's Information Guide, which explain compensation available, filing a claim, notice of designation, advertising, and the settlement process.

APPENDIX 2. USES OF THE OSLTF

The OSC may use the OSLTF for the payment of incident-specific removal costs, which includes the cost of monitoring removal actions by responsible parties and others. This includes all costs directly related to specific removals, including administrative, operational, and personnel expenses. The costs are both extramural and intramural, as defined below.

A. Extramural Costs. Extramural costs are those costs incurred external to the USEPA: contractor/vendor, other government agencies, etc. See Appendix 8 for contracting mechanisms to obtain extramural services. Examples of extramural costs include, but are not limited to, the following:

1. Contractor and consulting costs, including lease or rental of equipment supplied by a removal contractor or subcontractor.
2. Supplies, materials and equipment (including transportation costs) procured, leased or rented for the specific removal activity.
3. Reimbursement of allowable costs incurred by other Federal agencies (e.g., U. S. Army Corps of Engineers), or State or local governments. An Interagency Agreement (IAG) between USEPA and another federal agency supporting a removal action is an extramural cost.
4. Other incident-specific obligations or purchases of services used in conducting removals.

B. Intramural Costs. Intramural costs include internal costs incurred by the USEPA directly in support of removal activities. Intramural costs include:

1. Travel and per diem for USEPA personnel.
2. Salaries for USEPA personnel not normally available for oil spill removal, as well as overtime hours for all personnel. USEPA determines who is not normally available for oil spill removal.
3. Supplies used in support of a removal activity.
4. Charges for use of equipment and resources owned by the USEPA.
5. Replacement, repair, renovation or cleaning of USEPA equipment (including consumables) due to unavoidable oiling normally inherent in conducting removal.

C. Mixed Spills. (To be developed)

APPENDIX 3. FUNDS TRANSFERS, FPN & CEILING

- A. Multi-Incident IAG.** Annually, the NPFC will execute an IAG with USEPA to transfer funding from the OSLTF to USEPA to support the activities of USEPA in conducting oil removals. The funding is for incident specific costs. The USEPA accounting and financial data systems shall track expenditures and provide documentation to support subsequent cost recovery actions by the NPFC. The signed IAG will be delivered to EPA no later than October 1 of each year.
- B. FPN.** The OSC must contact the appropriate Coast Guard District Office and obtain an FPN and a ceiling for each incident no later than the conclusion of the pre-assessment phase (NCP Subpart D, Section 300.305, Phase II - Preliminary Assessment and Initiation of Action”).
- C. Ceiling Categories.** The following are the categories of costs funded by the OSLTF under an FPN and ceiling. The OSC is required to keep the costs in items (1), (2), and (3) within the approved ceiling.
1. Incident specific obligations and other costs to date, such as purchases or contracts for services.
 2. Incident specific USEPA reimbursable costs recorded in the USEPA accounting system (such as travel, per diem, overtime, plus salaries for personnel not normally available for oil spill response - USEPA determines who is not normally available for oil spill response.).
 3. Incident specific costs for all other Federal Agencies (e.g. NOAA, DOI-FWS, etc.) including obligations and costs recorded in the Coast Guard accounting system (Strike Team assistance costs, equipment, etc.).
 4. Incident specific salary costs of personnel who are normally available for oil spill response. These costs are recoverable from the Responsible Party (RP) but not reimbursable from the OSLTF.
- D. Incident Specific IAG.** For certain removal actions, an Incident Specific IAG may be the preferred funding mechanism. In that case, the OSC will still obtain an FPN and ceiling from the appropriate Coast Guard District Office and start the removal. The OSC/USEPA Region and the NPFC will then negotiate the IAG.
- An Incident Specific IAG can support better management when: removals are lengthy; large ceilings are involved; multiple agencies are involved; a chosen contracting mechanism introduces complexities, or some other condition requires extra management attention. The OSC and the NPFC should both consider the use of an incident-specific IAG under the following conditions:
1. The OSC estimates that an additional \$100,000 or more will be required after the first anniversary of the opening of the removal (issuance of the FPN). (Case

ceiling would be at least \$100,000 plus costs incurred in the first 12 months of removal.)

2. The OSC estimates that the removal will continue past the second anniversary of the FPN, i.e., into the third year of removal.
3. Any case that involves improvements to real property. The case officer can assist in determining what is considered an improvement.

E. Long Term Removals. If one or more of the conditions identified in Section D, above, occurs, then the following requirements apply:

1. **FINANCIAL PLANNING.** The OSC shall submit a Long Term Removal Plan to NPFC containing all resource considerations relating to the removal project from its inception to completion, including disposal of all real and personal property procured for the removal. If improvements to real property are involved, the Plan shall contain, at a minimum, a description of the removal system including components and system operation, initial setup costs, annual recurring costs, annual non-recurring costs, termination costs and other costs. The Plan shall list these cost categories by federal fiscal year. The Fund may be used to purchase fixtures for real property if this is the only cost-effective way to effect a removal; however, this does not eliminate other requirements concerning real property acquisitions, particularly using/taking non-RP property without due process of law.
2. **REAL PROPERTY -- ADVANCE PLANNING FOR DISPOSAL.** If improvements (long term facilities) are constructed on real property, the OSC must document the improvements to support cost recovery and potential litigation and to facilitate disposal upon closure. When the time for disposal arrives, records should be available to show purchase costs, accurate descriptions of structures and installed equipment, understandings or arrangements made in advance with any other parties, title holder to the property involved at the time the improvements were installed, and any other information needed to dispose of the specific type of improvement involved.
3. **SEPARATE IAG.** A long term removal can not be charged to a multi-incident IAG. The OSC must immediately notify NPFC so that the removal can be funded under an incident-specific IAG. The initial amount provided in an IAG will normally be the amount needed for the first 12 months. The NPFC will provide continued funding, through annual amendments, for long term actions that are consistent with the NCP and within the scope of the Long Term Removal Plan.
4. **ANNUAL ADMINISTRATIVE CYCLE.** At every twelve month anniversary of the removal project, the Long Term Removal Plan shall be reviewed and updated to show all actual costs to date and current best estimates of future costs, as well as changes in the nature of the spill or the technology being employed. Based on this information, the OSC should request additional ceiling in the amount needed for the next 12 months and initiate an amendment to the IAG.

APPENDIX 4. REPORTING AND COORDINATION

It is essential that the NPFC Case Officer be kept informed about the financial progress of a removal. Polreps are a logical and effective way to accomplish this. Every Polrep should show the financial status of the removal: current ceiling, obligations to date, an estimate of all other costs to date (see Appendix 2-D, above), and any other facts or figures that explain the current status or have value for planning subsequent activities. In the event that the OSC has no reason to generate Polreps, the need to keep the Case Officer informed is not diminished, and the OSC must convey the financial status information by some other kind of written communication.

The OSC is encouraged to contact the NPFC case officer if questions arise concerning the financing or documenting of a case. This may include agreements to fund participation by other government agencies, documentation of sources and identification of responsible parties, and special considerations for billing responsible parties. The OSC and the case officer will work together to find solutions that are in the best interest of the government.

At the conclusion of a removal, the USEPA OSC shall submit a termination or closure report to the NPFC Case Officer and shall also send a copy to the USEPA Cincinnati Financial Management Center (CFMC). The report shall contain an estimate of the total cost for the project, with reasonable allowances for uncertainty, and a request to reduce the project ceiling to that amount, thus releasing the balance for use elsewhere. There is no need for the full identification of RP(s) and address(es) unless they were not provided previously. This can be a Final Polrep or other written communication as above. If not a Polrep, a copy of the report must be sent to the USCG District (m) Office from which the FPN was obtained, in addition to the NPFC Case Officer.

APPENDIX 5. COST DOCUMENTATION

To support cost recovery, documentation of all removal costs incurred as a result of an incident is required. These costs are recoverable from the responsible party. Some of these costs are also reimbursable to USEPA from the OSLTF. These include costs for personnel who are not normally available for oil spill response (whose USEPA fixed account number is not for oil), premium pay (overtime, hazardous duty pay) for all personnel working at an incident, travel vouchers, contractor invoices, contractor cost letter reports, and any other charges related to an incident which have been charged to the reimbursable account number. Costs that are recoverable, but not reimbursable, include personnel normally available for oil spill response (under a USEPA fixed account number for oil), contractor invoices and all other costs associated with an incident but not charged to the reimbursable account.

A. Incident-Specific Documentation. The USEPA OSC shall produce a comprehensive written record supporting all expenditures and costs incurred in each removal. This documentation will support reimbursement of USEPA costs and NPFC's cost recovery on behalf of the OSLTF. Upon request of the OSC and contingent upon availability, a case officer will go to the scene of a removal and assist the OSC with documentation. USEPA may use: (1) the standard resource documentation procedures available from the Case Officer; or (2) alternative documentation that provides the following:

1. USEPA Personnel Costs. USEPA agrees to charge actual USEPA personnel labor costs for all USEPA personnel participating in an incident specific removal. Documentation must show each employee's name, grade, hours, appropriate subtotals and an overall total. Also included is the name and telephone number of the appropriate USEPA official to contact for additional information, if not the OSC. USEPA must include a copy of the Payroll Distribution Timesheets (EPA Form 2560-28) for all pay periods identifying the site/FPN and incident specific hours chargeable for each participating employee and a document showing payroll hours by pay period for all hours applicable to the incident. (NOTE: Timesheets and payroll reports must be redacted to remove data protected by the Privacy Act such as social security numbers, etc.)
2. USEPA Personnel Travel Costs. All incident specific travel costs must be documented. This shall include a summary indicating the employee's name, Travel Authorization (TA) number, amount, employee subtotal and overall incident total. Documentation must include copies of each TA, liquidated Travel Vouchers and expense receipts as required of the traveler. (NOTE: TA's, Vouchers and receipts must be redacted to remove data protected by the Privacy Act such as social security numbers, etc.)
3. Other USEPA Costs. Documentation for costs of USEPA vehicles and other government owned equipment shall contain a description of the item, unit of use (i.e. per hour or day, etc.), applicable rate and the total charge. Government owned equipment utilization is recorded on a daily basis.

- 1 4. Contractor Costs: USEPA shall document contractor costs for all incident
2 specific contractor related response costs.
3
- 4 (a) A cover sheet shall contain site name and FPN, the applicable Tasking
5 Document Number(s), date(s) of contractor work performance, labor
6 costs, travel costs, contractor purchases, G&A, overhead, base and award
7 fee (if appropriate), total invoice amount and a brief description of the
8 contractor activity performed under the Tasking Document(s);
9
- 10 (b) Copies of each Tasking Document and any amendments for contractor
11 related response activity for the site. For each Tasking Document
12 Number, the record shall contain daily line item detail by person for all
13 contractor personnel participating in response activity under that Tasking
14 Document;
15
- 16 (c) Copies of all contractor billing statements which enumerate the final
17 cumulative direct costs by applicable Tasking Document Number with the
18 applicable line items underlined. For contracts that are billed in summary
19 amounts, USEPA shall provide a report of the tasking documents and
20 associated costs to support the amount billed. (NOTE: If the cumulative
21 cost totals for any Tasking Document Numbers listed on the billing
22 statement are not the final costs, the contractor cover sheet must clearly
23 state this with an estimate of anticipated additional costs and the expected
24 date of completion. If there are any adjustments to the actual contractor
25 payment, the cover sheet must state the Tasking Document Number and
26 the actual amount paid).
27
- 28 (d) For each person, the daily line item detail shall include the employee
29 name, job title, professional level or hourly rate and hours;
30
- 31 (e) Line item detail shall record any other applicable contractor costs, such as
32 equipment rentals and purchases of supplies. Equipment rented for a
33 period of time can be recorded once, provided the line item clearly
34 indicates the time period.
35
- 36 5. Documenting Contractor Costs for USCG Basic Ordering Agreements (BOAs).
37 When the USEPA contracting officer places orders against USCG BOAs,
38 contractor cost documentation requirements stipulated in the USCG BOA shall
39 apply. The USEPA OSC, or the USEPA OSC's authorized representative (who
40 must be a federal employee) signs each daily contractor cost report. BOA
41 contractor invoices are sent directly by the USEPA OSC to the servicing USEPA
42 contracting officer. A copy of each OSC-certified invoice must be retained in the
43 required documentation. See Appendix 8.
44

6. Status Reports. The NPFC will assemble a complete set of the Polreps and other status reports submitted by the USEPA OSC and incorporate them into the cost documentation package.

B. Other Government Agency Costs: USEPA may use a Pollution Removal Funding Authorization (PRFA) or other agency agreement to employ another government agency in a removal action.

1. USEPA shall obtain cost documentation from other government agencies (federal, state and local) participating in a removal under the auspices of a USEPA OSC in accordance with the requirements specified in any applicable USEPA/Other Agency agreement (i.e., IAG, Cooperative Agreement, letter contract, etc.). When USEPA uses an Other Agency agreement, USEPA will obtain reimbursement from the OSLTF and will reimburse the other agency.
2. A USEPA OSC may, at his or her discretion, use a Pollution Removal Funding Authorization (PRFA), as described in NPFC Technical Operating Procedures for Standard Cost Documentation (TOPS), in lieu of the agreement mentioned above. In the absence of a USEPA/Other Agency agreement, a PRFA will be executed.
3. If the OSC requests assistance from the NPFC in executing a PRFA, the NPFC may authorize reimbursement directly to the other agencies from the OSLTF. The USEPA OSC must assure that the correct USCG accounting data is entered on the PRFA and that a copy is sent to the NPFC for this type of transaction to work properly. PRFAs are intended to be issued by the OSC pursuant to instructions contained in the NPFC Technical Operating Procedures (TOPS) for Resource Documentation. When USEPA issues a PRFA, other agency reimbursements will be processed in accordance with the TOPS.. Assistance in the use of PRFAs may be obtained from the NPFC Case Officer.
4. Cost documentation provided by other agencies shall include:
 - (a) Copies of tasking documents issued by the OSC which describe the equipment or services provided by the other agency;
 - (b) Copies of records detailing work performed, travel, labor, equipment and any additional items used, with unit costs and subtotals for each category, and an overall reimbursable total.

C. Oil & Gas Well Site Specific Costs. Costs for each well in a field or cluster treated in a removal project funded under a single FPN must be documented separately. Direct costs not attributable to a specific well must be allocated on a consistent basis against all wells subject to removal activity in any such project with combined funding. The resource documentation for the project must include: all costs for each individual well; the method of allocating each category of direct allocable costs; and the identity of the prospective responsible party or parties associated with each well. Examples of direct well site costs include, but are not limited to the following: removal of production tubing,

1 casing, well head assemblies, or gathering lines; plugging; grading and restoration of
2 surface well site terrain (including treatment of contaminated soil); and construction and
3 removal of temporary access. Examples of direct costs not attributable to a specific well,
4 which must be allocated, include: treatment of contaminated soil or water not associated
5 with a particular well; removal of central field storage tank batteries and heater treaters,
6 compressors, dryers, etc.; closure of waste oil pits; disposal; and OSC authorized
7 miscellaneous purchases, administrative, travel, and monitoring costs, including technical
8 assistance contractor costs, if any.

- 9
- 10 **D. USEPA Documentation Custodian & Point of Contact.** USEPA shall retain the
11 entire documentation package until such time as NPFC Case Officer requires it to support
12 negotiation or litigation following billing. The holder of the completed files shall be the
13 USEPA Regions. CFMC bills the USCG for reimbursement from the OSLTF and must
14 hold complete billing documentation inclusive of all adjustments to calculate the correct
15 reimbursement amount and support it.

16

17 In the event of a challenge to the removal cost documentation records following billing,
18 the NPFC Case Officer may request additional documentation from CFMC for resolution
19 with a copy of the request to the OSC.

- 20
- 21 **E. Timely Submission of Documentation.** To support prompt billing of the responsible
22 party (RP), documentation of costs is required at NPFC not later than 90 days following
23 receipt of contractor invoice of costs and/or receipt of payment of EPA travel vouchers.
24 The cognizant EPA official shall advise the NPFC if a delay is expected, the reason for
25 the delay, and the date the documentation will be provided.

26

27 Six months from initiation of the removal action and every six months thereafter until site
28 completion, the OSC must assemble an interim cost documentation package and forward
29 copies to the CFMC and NPFC. The cost documentation package will contain all of the
30 elements described in the Cost Documentation Appendix.

- 31
- 32 **F. Documentation Retention Period.** The USEPA agrees to retain all cost
33 documentation for a minimum of six years following completion of incident removal
34 activity unless otherwise advised by the NPFC. USEPA must retain only that cost
35 documentation which was not forwarded to the NPFC under section VII of this
36 agreement.

- 37
- 38 **G. USEPA Indirect Cost Model.** The USEPA agrees to develop an indirect cost model
39 that will support USEPA reimbursement of all indirect cost expenditures. The USEPA
40 shall coordinate this project with the NPFC at reasonable intervals to assure that it will
41 support cost recovery actions against RPs.

- 42
- 43 **H. Forensic Documentation.** When the source of an oil spill is in question, the OSC may
44 use forensic laboratory analysis to compare the spilled oil with suspected sources. The
45 OSC must employ sampling collection and handling procedures that assure
46 uncontaminated samples and an unbroken chain of custody from collection through

1 analysis. The forensic process should be able to withstand challenge in court to be of
2 value in cost recovery.
3

4 The USEPA OSC may use the Coast Guard Marine Safety Laboratory in Groton,
5 Connecticut, or other labs that are approved under the USEPA Contract Lab Program
6 (CLP) and shall provide, if necessary, expert testimony in cost recovery litigation.
7
8
9

APPENDIX 6. PROPERTY & EQUIPMENT PURCHASES

- A. Buy Vs. Lease.** All property purchased with OSLTF funds under an incident-specific FPN remains property for which the NPFC has a fiduciary interest. OSCs should only purchase property with OSLTF funds when operational necessity directly related to a removal dictates or when it is clearly more beneficial to the government than leasing. Otherwise, leasing is the preferred choice. When making decisions to buy versus lease property, and operational conditions permit, OSCs should factor in the costs necessary for acquisition, maintenance and disposal/disposition of the property. Many of these considerations can be addressed in the planning process before a spill occurs. Documentation of the factors considered in purchasing property during a spill are critical in cost recovery and litigation and shall be documented to the greatest extent possible. OSCs should be aware that property purchased to support a removal will be billed to the responsible party at 100% of the cost. Accordingly, the OSC should provide the responsible party the opportunity to purchase or otherwise directly supply the property needed. Upon completion of the removal, any property provided by the responsible party shall be transferred directly to the responsible party.
- B. Disposal and Property Records.** All property purchased with OSLTF funds must be accounted for in the cost documentation. However, not all OSLTF purchased property requires documented disposal/disposition. For example, all consumable items are considered expended during the removal activity. Therefore, consumable property remaining at the completion of removal action only requires cost effective disposal/disposition. Lots of consumable property having a cost in excess of \$1,000 shall be treated as non-consumables. The USEPA shall retain documentation or evidence of disposal/disposition action taken for all non-consumable property and consumables in lots worth more than \$1,000. Non-consumable property includes items costing over \$1,000 and items of lower cost but high interest (e.g., radios, FAX machines, cellular phones, computers, pagers, copiers, photographic equipment, protective clothing, test equipment, etc.).
- C. Defense Reutilization & Marketing Office (DRMO).** To properly dispose of non-consumable property, the OSC shall use the closest Defense Reutilization and Marketing Office (DRMO). Transportation costs associated with disposal/disposition of property may be charged to the FPN. The DRMO usually requires a form DD-1348 for each group of like items. Where the form requests a Department of Defense Activity Address Code (DODAAC), use "Z74100."
- D. DRMO & Property Survey Records.** The OSC shall forward copies of DD-1348(s) to the NPFC in the billing summary and case completion report following completion of the removal. A copy shall also be placed in the complete case file. Lost property, stolen property, and damaged property that is not suitable for transfer to a DRMO must be surveyed in accordance with federal property management guidelines. A copy of the survey report must be forwarded to the NPFC case officer in the billing summary and case completion report, and a copy shall also be placed in the complete case file.

- 1 **E. Real Property.** The Fund may be used to make improvements to real property if it is
2 the necessary or the cost-effective way to effect the removal; however, this does not
3 obviate other requirements pertaining to real property acquisitions, particularly taking
4 and compensation issues. Upon completion of the cleanup, removable fixtures should be
5 disposed of in the same manner as personal property purchased with OSLTF funds (see
6 Appendix 6); permanent improvements to real property should be removed, abandoned or
7 excessed, as appropriate, as permitted by the ownership of the real property.
8
- 9 **F. Additional Information.** If questions should arise about property or related issues,
10 such as DRMOs, the OSC should call the case officer.

1
2
3 **APPENDIX 7. DESIGNATION OF SOURCE & CLAIMS**
4

5 OPA requires where possible and appropriate that the source of each discharge or substantial
6 threat of discharge be designated and the RP notified. Subpart B of the NCP section
7 300.135(c) states that “the OSC shall, to the extent practicable, collect pertinent facts about the
8 discharge or release, such as its source and cause; the identification of potentially responsible
9 parties; the nature, amount, and location of discharged or released material; the probable
10 direction and time of travel of discharged or released materials; ... the pathways to human and
11 environmental exposure...”; etc. The NPFC is responsible for claims and will notify the RP for
12 USEPA incidents following receipt from the USEPA OSC of the RP’s identity and address
13 (including, as appropriate: telephone, telex, and fax numbers; resident agents or agents for
14 service of process; those authorized to speak and act for the RP in this situation, particularly
15 when the RP is an organization, and how they can be contacted; tax ID numbers; and any other
16 information concerning RP organizational structure(s) which could assist the case officer).
17 The USEPA OSC shall scope out the potential for third party claims arising out of the incident.
18 The OSC shall promptly make this information available to the NPFC Case Officer to support
19 the evaluation of the impact of claims, as well as enabling designation and notification. Upon
20 request of the OSC and contingent upon availability, a claims officer will go to the scene of a
21 removal to assist the OSC in evaluating the potential for claims and in identifying sources and
22 potentially responsible parties.
23
24
25

APPENDIX 8. BILLING

A. The Billing Process. The USEPA OSC must submit all financial documentation to CFMC for verification and final adjustments. CFMC shall submit a preview copy of the Billing Summary to NPFC for validation of costs to be billed. Once agreement between CFMC and NPFC has been reached on the total amount to be billed, CFMC will initiate reimbursement. CFMC will use the U.S. Treasury's On-Line Payment And Collection System (OPAC) to send the total bill for reimbursement directly to the USCG Finance Center in Chesapeake, Virginia (ALC = 69-02-5102). As part of the same action, CFMC shall send (by mail or fax) a copy of the Billing Summary to the NPFC at the following Address:

National Pollution Funds Center (cm)
4200 Wilson Boulevard, Suite 1000
Arlington, Virginia 22203-1804

(703) 235-4837 fax

B. Billing Summary. The Billing Summary is based on supporting documentation for all recoverable costs, including both reimbursable and non-reimbursable. The Summary must contain a line item showing the total dollar amount for each of the major categories of costs:

1. USEPA Personnel
2. USEPA Travel
3. Contractors (list each separately)
4. Other Government Agency Costs (list each separately)
5. Marine Safety Lab
6. Miscellaneous

The Summary should also provide explanations for any unclear elements or issues.

C. Timetables. The preview copy of the Billing summary must be received by NPFC not later than 90 days following the OSC's receipt of contractor invoice(s) and/or payment of USEPA travel vouchers. Once NPFC has validated costs on the preview copy of the Billing Summary, CFMC will initiate reimbursement via OPAC. CFMC shall forward to the NPFC and USCG Finance Center the Billing Summary and OPAC accounting information by fax or mail within five working days after submitting the OPAC.

APPENDIX 9. CONTRACTING

A. AUTHORIZATION FOR USE OF UNITED STATES COAST GUARD BASIC ORDERING AGREEMENTS FOR POLLUTION CLEANUP SERVICES AND EQUIPMENT. USEPA may act as an ordering office under the USCG Basic Ordering Agreements (BOAs) issued by Commander (fcp), Maintenance and Logistics Command Atlantic and Commander (fcp), Maintenance and Logistics Command Pacific. This ordering authority is subject to the following conditions:

1. Only Contracting Officers or On-Scene-Coordinators duly warranted by the USEPA in accordance with the Federal Acquisition Regulations (FAR) may issue delivery orders, up to the maximum authority of their warrant, under the BOAs. This authority may not be redelegated. Within 30 days of the execution of this MOU, USEPA will provide a list of the names and addresses of all contracting officers executing delivery orders under the BOAs. The list will include the geographic area of responsibility for each contracting officer. Annually, USEPA will update the list. The initial list and the updates will be provided to the two USCG offices listed in paragraph 13 of this appendix.
2. If a USEPA OSC does not have a Contracting Officer's Warrant, all requirements for BOA services and supplies must be referred to a warranted USEPA Contracting Officer.
3. USEPA Contracting Officers and warranted OSCs shall be responsible for reviewing, understanding and complying with the provisions of the BOAs.
4. All delivery orders shall be within the scope of the BOA and documented as required by the FAR, supplemental agency regulations and the BOA.
5. Delivery orders shall be issued only when emergency cleanup is required and internal USEPA procedures and regulations authorize contracting under the authority of FAR 6.302-2, Unusual and Compelling Urgency; when required, the USEPA shall prepare a Justification for Other than Full and Open Competition (JOTFOC); and under no circumstances shall the BOAs be used for remediation, routine or planned actions.
6. All delivery orders issued by the USEPA shall contain the following information: full address of the contract administration office and name and telephone number of the USEPA Contracting Officer; the full address of the USEPA payment office; the full address where invoices are to be sent; and the name of the entity responsible for certifying receipt and acceptance of services and supplies.
7. The USEPA shall be responsible to certify the receipt and acceptance of the services and supplies in accordance with all laws and regulations, and the terms and conditions of the BOA.

- 1 8. Funding for delivery orders shall comply with applicable provisions elsewhere in
2 this MOU.
3
- 4 9. All payments shall be made by the USEPA authorized payment office cited on
5 each individual delivery order and shall be made in accordance with the Prompt
6 Payment Act and FAR 52.232-25, Prompt Payment.
7
- 8 10. Any interest payable shall be funded by the OSLTF and paid by the USEPA.
9 USEPA shall report to the NPFC total interest paid in the prior fiscal year no later
10 than 15 November of each year.
- 11 11. The USEPA shall not take any action, either directly or indirectly, that could
12 result in a change to the pricing, quality, established response timeframes, or any
13 other terms and conditions of the BOA; or direct the accomplishment of effort
14 which would exceed the scope of the BOA.
15
- 16 12. The USEPA shall resolve all disputes arising from or relating to delivery orders
17 that they issue. All disputes settled in favor of the contractor will be funded out
18 of the OSLTF and in no event will they be paid out of Coast Guard operating
19 funds.
20
- 21 13. Within forty-eight (48) working hours after issuance of a delivery order the
22 USEPA shall forward a copy (minus enclosures) to the NPFC and the appropriate
23 address below:
24
- 25 Commander (fcp), Maintenance and Logistics Command Pacific
26 Building 54A, Coast Guard Island
27 Alameda, CA 94501-5100
28 Commander (fcp-2), Maintenance and Logistics Command Atlantic
29 300 East Main Street, Suite 965
30 Norfolk, VA 23510-9113
31
- 32 14. The USEPA shall provide the appropriate contracting office listed above with a
33 list of closed out delivery orders by May 15 and November 15 each year.
34

35 -End-
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